

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CASE NO.  
NOTICE OF REMOVAL  
[28 U.S.C. §1441]

Chad Teixeira, For Himself and for Others )  
Similarly Situated, )  
Plaintiff, )  
 )  
vs. )  
 )  
Quality Beverage Limited Partnership<sup>1</sup>, )  
Defendant )

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §1441 and 29 U.S.C. §185, the Defendant in the above-referenced action respectfully submits this Notice of Removal of this action from the Trial Court of the Commonwealth of Massachusetts, Bristol County Superior Court, docket number 1873-cv-00407, in which court the action was originally filed and is pending, to the United States District Court for the District of Massachusetts. In support of this Notice of Removal, the Defendants state the following:

1. A copy of the Summons, Complaint and Civil Action Cover Sheet is attached hereto as Exhibit A. This action was served on July 9, 2018. Id. Defendant has not yet answered or filed a Rule 12 motion. This Notice is being filed within thirty (30) days of service on the Defendant.

2. Plaintiff alleges he was/is an employee of the Defendant and was employed pursuant to a collective bargaining agreement (“CBA”). Complaint ¶¶3, 6. He is represented by Teamsters Local 170 with respect to his terms and conditions of employment. Id. at ¶3, 7.

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<sup>1</sup> Misidentified in the Complaint as Quality Beverages, Inc.

3. Plaintiff's Complaint is a putative class action alleging that the Defendant failed to pay Plaintiff appropriately pursuant to the CBA and thus violated the Massachusetts Payment of Wages Statute, G.L. c. 149, §§148 and 150. Id. at ¶¶1, 8, 9-12. Plaintiff further alleges that he filed a grievance under the CBA, that said grievance was arbitrated and that the arbitrator found in Plaintiff's favor. Id. at ¶¶15-18. Defendant denies any liability under any theory.

3. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §1441(a), and thus Defendant is entitled to remove this action to this Court. While under the "well pleaded complaint" rule the Plaintiff has not specifically articulated a federal claim, he cannot avoid the obvious fact that he is making a claim for wages pursuant to the CBA, and thus the "artful pleading exception" applies. Therefore the real claim here is for enforcement of the CBA and/or vacating of the arbitration award pursuant to 29 U.S.C. §185 (Section 301 of the Labor-Management Relations Act of 1947 ("LMRA") aka the Taft-Hartley Act, 80 H.R. 3020, Pub.L. 80-101, 61 Stat. 136, enacted June 23, 1947). See Lawless v. Steward Healthcare System, --- F. 3d ---, 2018 WL 3099427 (1<sup>st</sup> Cir. 6.27.18). Section 301, in turn, completely preempts Plaintiff's state law claim which is based on the CBA.

4. The Summons, Complaint, Civil Action Cover Sheet and Civil Tracking Order are the only papers, process, pleadings or orders that have been served upon or otherwise received by the Defendant. To the knowledge of the Defendant, no other parties have been named as defendants in the Complaint and no further proceedings have been held as of the date of this request. To the extent that the Plaintiff purports to suggest that there are individual Wage Act defendants other than Quality Beverage Limited Partnership, even though not named or served, all such persons that could conceivably be considered proper defendants under the Wage Act hereby consent to removal.

5. A copy of this Notice of Removal will be filed with the clerk of the Trial Court of the Commonwealth of Massachusetts, Bristol County Superior Court, and served upon the Plaintiff as required by 28 U.S.C. §1446(d).

WHEREFORE, the Defendant respectfully requests that the above action now pending in the Trial Court of the Commonwealth of Massachusetts, Bristol County Superior Court, be removed to this United States District Court for the District of Massachusetts.

Respectfully submitted by the Defendant,  
By its attorney,

Dated: July 30, 2018

By: /s/ Geoffrey P. Wermuth

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### **CERTIFICATE OF SERVICE**

I, Geoffrey P. Wermuth, hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF (NEF) and paper and email copies will be sent to those indicated as non registered participants on July 30, 2018, namely Counsel of Record for Plaintiff, Richard J. Rafferty, Gregory P. Benoit and Alyssa M. Jankowski, Eden Rafferty, 238 Shrewsbury St., Worcester, MA 01604, and by paper copy upon the Bristol County Superior Court, 9 Court St., Taunton, MA 02780, all paper copies served via U. S. Mail first-class, postage prepaid.

/s/ Geoffrey P. Wermuth

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Geoffrey P. Wermuth